

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PROJECT MANAGEMENT INSTITUTE, INC., *et al.*

v.

LEWIS R. IRELAND.

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CIVIL ACTION

NO. 03-1712

Memorandum and Order

YOHN, J.

September __, 2006

Defendant Lewis R. Ireland has filed, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, a Motion to Revoke the Stipulated Judgment entered on February 2, 2004. For the reasons that follow, I will deny Ireland's motion with prejudice.

I. Background

Plaintiffs, Project Management Institute, Inc., and two of its former board members (together hereinafter referred to as "PMI"), originally filed suit against defendant Lewis R. Ireland on October 1, 1999. In that original complaint, PMI alleged defamation, breach of contract, tortious interference with existing contracts, intentional infliction of emotional distress, and negligence. On April 11, 2000, the parties reached a settlement agreement, which was entered as a consent decree by this court on May 23, 2000. The consent decree provided, among other things, that Ireland discharged PMI from all claims and liabilities arising from the subject matter of the lawsuit. Ireland nevertheless filed such a lawsuit in the District of Colorado on October 1, 2001. That court dismissed the case on March 26, 2002 after concluding that (1) it

did not have jurisdiction to hear the case, and (2) even if it allowed Ireland to cure the jurisdictional deficiency, the May 23, 2000 consent decree of this court barred the suit. Prior to that dismissal, Ireland filed a motion to dismiss the original action in this court, which was interpreted as an action for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure. This court denied Ireland's motion.

On March 21, 2003, PMI filed this action against Ireland alleging civil contempt, wrongful use of civil proceedings, and abuse of process. I granted PMI's motion for summary judgment for the civil contempt claim, but denied summary judgment as to the remaining claims. *See Project Mgmt. Inst. v. Ireland*, 2003 U.S. Dist. LEXIS 23710, at **24-25 (E.D. Pa. Dec. 30, 2003). Subsequently, the parties agreed to a Stipulated Judgment, which the court entered on February 2, 2004. In accordance with the Stipulated Judgment, this court found in favor of PMI on all remaining claims. Several months later, Ireland filed his second Rule 60(b) motion, this time for relief from the Stipulated Judgment. More specifically, Ireland based his Rule 60(b)(3) motion on allegations of fraud and misrepresentation by the plaintiffs' counsel. This court denied Ireland's motion as patently frivolous. (Order, Jan. 31, 2005.) On appeal, the Third Circuit affirmed the denial of Ireland's motion. *Project Mgmt. Inst. v. Ireland*, 144 Fed. Appx. 935, 938 (3d Cir. 2005) (non-precedential).

On March 20, 2006, Ireland filed the instant Rule 60(b) motion—his third—this time pursuant to Rule 60(b)(6). On July 12, 2006, Ireland filed a motion for summary judgment alleging misconduct by plaintiffs, which this court denied as frivolous. In the instant motion, Ireland alleges that a provision of the Stipulated Judgment of February 2, 2004 is in conflict with a prohibition on the use of Individual Retirement Arrangements (“IRA”) announced in Internal

Revenue Service (“IRS”) *Publication 590*. (Def.’s 60(b)(3) Mot. to Revoke Stipulated J. 2.) For the reasons that follow, I will deny Ireland’s Motion to Revoke the Stipulated Judgment of February 2, 2004.

II. Legal Standards

Rules 60(b)(1) through (5) of the Federal Rules of Civil Procedure enumerate specific reasons why a court may overturn a final judgment, including “excusable neglect” and “mistake.” Fed. R. Civ. P. 60(b). Rule 60(b)(6) is referred to as “the catch-all provision” because it provides that a “court may relieve a party or a party’s legal representative from a final judgment, order or proceeding . . . for any . . . reason justifying relief from operation of a judgment.” Fed. R. Civ. P. 60(b)(6); *see also Fugah v. Mazurkiewicz*, 2005 U.S. Dist. LEXIS 7292, at *27 (E.D. Pa. April 27, 2005).

Unlike Rule 60(b)(6) motions, which must be filed within a “reasonable time,” motions brought under Rule 60(b)(1)-(3) must be filed within one year after entry of the judgment from which relief is sought. Fed. R. Civ. P. 60(b)(1)-(3). This one-year time limit imposed on Rule 60(b)(1)-(3) motions may not be avoided by bringing a motion under Rule 60(b)(6). *See Pioneer Inv. Serv.’s Co. v. Brunswick Assoc.’s*, 507 U.S. 380, 393 (1993). The Supreme Court has stated that Rule 60(b)(1) and Rule 60(b)(6) “are mutually exclusive, and thus a party who failed to take a timely action due to ‘excusable neglect’ may not seek relief more than one year after the judgment by resorting to subsection (6).” *Id.*; *see also Stradley v. Cortez*, 518 F.2d 488, 493 (3d Cir. 1975). Further, the Third Circuit explained that “Rule 60(b)(6) is not intended as a means by which the time limitations of 60(b)(1-3) may be circumvented... and [is available] only when the

relief sought is based upon ‘any other reason’ than a reason which would warrant relief under 60(b)(1-5).” *Stradley*, 518 F.2d at 493 (citing *Federal Deposit Insurance Corp. v. Alker*, 234 F.2d 113, 116-17 & n.5 (3d Cir. 1956)).

A motion brought under Rule 60(b)(6) must be made “within a reasonable time” after entry of the judgment from which relief is sought. Fed. R. Civ. P. 60(b)(6). The district court has discretion in determining, on a case to case basis, whether a Rule 60(b)(6) motion has been made within a “reasonable time.” *Taylor v. Steward*, 2001 U.S. Dist. LEXIS 10891, at *9 (E.D. Pa. July 11, 2001) (citing *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 660-61 (1st Cir. 1990)). Relevant considerations include “whether the parties have been prejudiced by the delay and whether a good reason has been presented for failing to take action sooner.” *Boch Oldsmobile*, 909 F.2d at 661; *see also United States v. Wyle*, 889 F.2d 242 (9th Cir. 1989).

If the court finds that the Rule 60(b)(6) motion is proper and timely, the decision of whether or not to grant relief from a judgment “lies in the ‘sound discretion of the trial court guided by accepted legal principles applied in light of all the relevant circumstances.’” *United States v. Hernandez*, 158 F. Supp. 2d 388, 392 (D. Del. 2001) (quoting *Ross v. Meagan*, 638 F.2d 646, 648 (3d Cir. 1981)). Rule 60(b)(6) provides that a “court may relieve a party or a party’s legal representative from a final judgment, order or proceeding . . . for any . . . reason justifying relief from operation of a judgment.” Fed. R. Civ. P. 60(b)(6). However, “[r]elief under Rule 60(b)(6) ‘is available only in cases evidencing extraordinary circumstances.’” *Reform Party v. Allegheny County Dep’t of Elections*, 174 F.3d 305, 311 (3d Cir. 1999) (en banc) (citations omitted). Intervening developments in the law alone “rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6).” *Morris v. Horn*, 187 F.3d 333, 341 (3d

Cir. 1999) (quoting *Agostini v. Felton*, 521 U.S. 203, 239 (1997)).

Finally, the Third Circuit stated that the “general purpose of Rule 60(b) is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done.” *Boughner v. Sec’y of Health, Educ., & Welfare*, 572 F.2d 976, 977 (3d Cir. 1978)). Therefore, when the “defendants made a free, calculated and deliberate choice to submit to an agreed upon decree rather than seek a more favorable litigated judgment, their burden under Rule 60(b) is perhaps even more formidable than had they litigated and lost.” *Philadelphia Welfare Rights Org. v. Shapp*, 602 F.2d 1114, 1120 (3d Cir. 1979).

III. Discussion

The instant Rule 60(b)(6) motion must be denied because “Rule 60(b)(6) is not intended as a means by which the time limitations of 60(b)(1-3) may be circumvented... and [is available] only when the relief sought is based upon ‘any other reason’ than a reason which would warrant relief under 60(b)(1-5).” *Stradley*, 518 F.2d at 493 (citing *Alker*, 234 F.2d at 116-17 & n.5). Rule 60(b)(1) allows a court to grant relief from judgment for “mistake, inadvertence, surprise, or excusable neglect;” however, motions for relief under Rule 60(b)(1) must be brought within one-year of the judgment that the movant seeks to revoke. Fed. R. Civ. P. 60(b)(1). Ireland’s reason for relief is that the parties mistakenly included a provision that purportedly conflicts with prohibitions found in the IRS publications of 2005. (Def.’s 60(b)(3) Mot. to Revoke Stipulated J. 1.); *see also* Dep’t of the Treasury: Internal Revenue Serv., *Publ’n 590: Individual Ret. Arrangements* 41 (2005). However, these allegedly conflicting prohibitions existed prior to the date of the Stipulated Judgment. *See* Dep’t of the Treasury: Internal Revenue Serv., *Publ’n 590:*

Individual Ret. Arrangements 41 (2003). Therefore, Ireland's reason for relief falls under Rule 60(b)(1) and not Rule 60(b)(6) because it is based on mistake, inadvertence, or excusable neglect.

An untimely motion under Rule 60(b)(1) must be denied. As stated above, the parties voluntarily agreed to the Stipulated Judgment on February 2, 2004. Therefore, the time period for seeking relief expired on February 2, 2005. Ireland filed the instant motion on March 20, 2006, over two years from the date of the Stipulated Judgment from which he now seeks relief. Thus, because Ireland's Rule 60(b)(6) motion is an attempt to circumvent the one-year time limitation of Rule 60(b)(1), it must be denied.

Further, even if Ireland's motion was not time-barred, it would still be denied under Rule 60(b)(1) because "an intentional commission cannot be characterized as [an excusable] mistake, inadvertence, or neglect." *Wheeler v. Beard*, 2006 U.S. Dist. LEXIS 12540, at *15 (E.D. Pa. Mar. 7, 2006) (citing 12 James Wm. Moore et al., *Moore's Federal Practice*, § 60.41 (3d ed. 2005) (stating "deliberate or willful conduct on the part of the person seeking relief from the judgment precludes, by its very nature, a finding of 'mistake' or 'inadvertence' or 'surprise' or 'excusable neglect'")). Here, Ireland voluntarily consented to the Stipulated Judgment of February 2, 2004. (*See* Pls.' Resp. in Opp'n of Def.'s 60(b)(3) Mot. to Revoke Stipulated J. 4.) Because Ireland "made a free, calculated and deliberate choice to submit to an agreed upon decree rather than seek a more favorable litigated judgment, [his] burden under Rule 60(b) is perhaps even more formidable than had [he] litigated and lost." *Shapp*, 602 F.2d at 1120. Therefore, even if Ireland had brought his motion within Rule 60(b)(1)'s one-year time limitation, it would still be denied.

Finally, even if the court were to accept Ireland's argument that his reasons for relief are

appropriately brought under Rule 60(b)(6), the motion would still be denied for two reasons. First, Rule 60(b)(6) motions must be brought within a “reasonable time.” Ireland filed his motion after more than two years had passed since the date of the Stipulated Judgment. Further, as the IRS prohibitions relied upon by Ireland’s motion existed well before the date of the Stipulated Judgment, no “good reason has been presented [by Ireland] for failing to take action sooner.” *Boch Oldsmobile*, 909 F.2d at 661; *see also* Dep’t of the Treasury: Internal Revenue Serv., *Publ’n 590: Individual Ret. Arrangements* 41 (2003). As stated above, “the general purpose of Rule 60(b) is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done.” *Boughner*, 572 F.2d at 977. If the court were to revoke the Stipulated Judgment that Ireland voluntarily agreed to more than two years ago, it would not be affording the appropriate weight to the principle that “litigation must be brought to an end.” *Id.* In addition, this is Ireland’s second Rule 60(b) motion seeking relief from the Stipulated Judgment of February 2, 2004, the first one being denied by this court as frivolous. (Order, Jan. 31, 2005), *aff’d*, *Project Mgmt. Inst. v. Ireland*, 144 Fed. Appx. 935, 938 (3d Cir. 2005) (non-precedential).

Secondly, even if the motion had been brought within a “reasonable time,” Ireland has not made a proffer sufficient to meet his burden under Rule 60(b)(6) of showing “extraordinary circumstance” to justify relief from the Stipulated Judgment. *See Allegheny County Dep’t of Elections*, 174 F.3d at 311. Ireland only supports his motion with IRS *Publication 590*, which prohibits the use of funds in an IRA as “security for a loan.” *See* Dep’t of the Treasury: Internal Revenue Serv., *Publ’n 590: Individual Ret. Arrangements* 41 (2005). Ireland’s allegations that paragraphs 9, 10, and 11 of the Stipulated Judgment violate the regulations found in IRS

Publication 590 are without merit. (See Def.'s 60(b)(3) Mot. to Revoke Stipulated J. 2.)

Paragraph 9 states that Ireland “agrees that judgment on [PMI’s] claims shall be entered against him (Ireland) and in favor of [PMI] in the amount of... \$150,000;” however, PMI agrees not to execute on the judgment unless Ireland violates the terms of the Stipulated Judgment within the next five years. (Stipulated J. ¶ 9.) Paragraphs 10 and 11 provide that if there is such a violation by Ireland, PMI shall have the right to execute on the \$150,000 judgment against Ireland’s funds located in a specified employer pension plan. (Stipulated J. ¶¶ 10, 11.) Thus, the alleged conflict between the IRS publication and the Stipulated Judgment does not exist. No “loan” is alleged. Furthermore, even an actual intervening development in the law would “rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6).” *Morris*, 187 F.3d at 341 (quoting *Agostini*, 521 U.S. at 239).

Because Ireland’s reasons for relief from the Stipulated Judgment underlying his Rule 60(b)(6) motion fall within the scope of subsection (1) of Rule 60(b), it will be denied. Even if the motion is considered under Rule 60(b)(6), it still fails. Therefore, I will deny defendant Ireland’s Motion to Revoke the Stipulated Judgment.

An appropriate order follows.

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CIVIL ACTION

NO. 03-1712

Order

YOHN, J.

AND NOW on this _____ day of September 2006, upon consideration of defendant Lewis R. Ireland's Motion to Revoke the Stipulated Judgment (Doc. No. 74), plaintiffs' response thereto, and defendant's reply, **IT IS HEREBY ORDERED** that defendant's Motion to Revoke the Stipulated Judgment under Rule 60(b)(6) is **DENIED**.

s/ William H. Yohn Jr., Judge
William H. Yohn Jr., Judge